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NO. 0397 P. 10

Atty. Dkt. No. SALK 2270-4 (088802-5211)

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

Applicant: Ronald M. Evans

Title: XENOBIOTIC COMPOUND  
MODULATED EXPRESSION  
SYSTEMS AND USES  
THEREFOR

Appl. No.: 09/840,008

Filing Date: 4/20/2001

Examiner: Joseph T. Woitach

Art Unit: 1632

Conf. No. 3075

<b>CERTIFICATE OF FACSIMILE TRANSMISSION</b> I hereby certify that this correspondence is being facsimile deposited with the United States Patent Office in Alexandria, Virginia, on the date below.  _____ Stephen E. Reiter (Printed Name)  _____ (Signature)  February 17, 2005 (Date of Deposit)
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**APPLICATION FOR PATENT TERM ADJUSTMENT**

**UNDER 37 C.F.R. §1.705**

Mail Stop Petition  
Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

Sir:

Applicants respectfully request reconsideration of the patent term adjustment (PTA) of 0 days as indicated on the Determination of Patent Term Adjustment under 35 U.S.C. 154 (b) mailed on November 18, 2004. The total PTA should be 124 days as determined below.

Upon review of the Patent Term Adjustment History using the Patent Application Information Retrieval (PAIR) database, Applicants note the following inaccuracies. The total Applicant delay is incorrectly listed as:

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(a) 93 days (from PTO action of alleged "Informal or Non-Responsive Amendment after Examiner Action" effective April 20, 2004 until the improper PTO assertion of "Mail Notice of Informal or Non-responsive Amendment" was withdrawn on July 22, 2004).

(b) In addition, Applicants should be credited 162 days for USPTO delays since the Projected Patent Grant Date is May 31, 2005, an additional total of 162 days beyond December 20, 2004 (three years after the filing of the above-identified application).

#### EXPLANATION

With respect to point (a) above, 93 days delay was improperly attributed to the Applicant from April 20, 2004, when an erroneous "Non-Responsive Amendment after Examiner Action" was mailed by the USPTO, until July 22, 2004 when Applicant's response was finally acknowledged by the USPTO to be responsive after all. Thus, the entire 93 days delay were due to improper USPTO action, and therefore, should not be charged to Applicant.

With respect to point (b) above, the present application was filed on December 20, 2001. Thus, the three year period to end prosecution expires no later than December 20, 2004. In view of the projected patent grant date of May 31, 2005, there are an additional 162 days that should be charged to USPTO delays.

Therefore, the net Patent Term Adjustment should be 124 days (based on 154 USPTO days as acknowledged on PAIR, plus the 93 + 162 day adjustments referred to above, less Applicant delay of 378 as asserted on PAIR reduced by 93 days as noted above.). Accordingly, it is respectfully requested that the total patent term adjustment of 124 days be issued in favor of the Applicants. This patent is not subject to a terminal disclaimer.

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It is further requested that the fee of \$200.00 be waived in light of the above circumstances. However, if the Patent Office determines that the fee is required, the Commissioner is authorized to charge the unpaid amount to Deposit Account No. 50-0872.

In the event any matters remain to be resolved in view of this communication, the Examiner is encouraged to call the undersigned so that a prompt disposition of this application for patent term adjustment can be achieved.

Respectfully submitted,

Date: February 17, 2005

  
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